

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)
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Michael HERMANN) Group Art Unit: 2872
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Application No.: 09/817,797) Examiner: Audrey Y. Chang
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Filed: March 27, 2001) Confirmation No. 8356
	:
For: DEVICE FOR QUANTITATIVE)
ASSESSMENT OF THE ALIGNED	:
POSITION OF TWO MACHINE)
PARTS, WORKPIECES OR THE LIKE	:

PETITION UNDER 37 CFR 1.181(a)(1) & (3)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby seeks review of the actions of the Examiner described below and invokes the supervisor authority of the Director to implement the corrective actions requested herein.

Statement of the Facts

In section 2, page 2 of the Office Action issued March 17, 2009, the Examiner "objected" to Amendment filed on August 15, 2006, on the basis that it introduced new matter due to the addition of certain identified language to the claims and has required applicant to cancel the objectionable phrases and features from the claims.

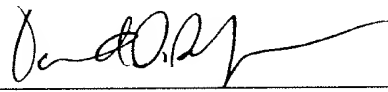
Action Requested

It is requested that the Director withdraw, or at least suspend, this objection and requirement so that the Amendment with the claims containing the language considered by the Examiner to be unsupported by the specification can remain in the application in order

that the new matter issue can be resolved by the Board of Appeals and Interferences relative to the 35 USC § 112, first paragraph rejections of the claims based on an alleged failure to comply with the written description requirement due to a lack of support for the claimed subject matter in the original disclosure and the lack of an enabling disclosure therefor.

In support of this Petition, it is pointed out that MPEP §§ 608.04(c) and 2163.06 both make it clear that new matter objections are to be raised only with respect to additions to the specification (which in the present case there are none) and that new matter issues with respect to the claims are to be confined to the rejections under 35 USC § 112, first paragraph that are reviewable by the Board of Appeals and Interferences. Therefore, since it is applicant's intent to reinstitute appeal proceedings in connection with this application, granting of this petition is necessary to avoid abandonment of the application for failure to comply with the Examiner's requirement to delete the alleged new matter from the claims.

Respectfully submitted,

By: 

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